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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,433	01/26/2001	John C. Voellmicke	DEP 530	8044

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/771,433

Applicant(s)

VOELLMICKE ET AL.

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-88 is/are pending in the application.
- 4a) Of the above claim(s) 58-61 and 75-84 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-57, 62-74 and 85-88 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The election, made without traverse, of the invention of Group I, claims 1-57, 62-74 and 85-88 is acknowledged.

Election/Restrictions

SPECIES election of the claimed invention

2. This application contains claims directed to the following patentably distinct species of the claimed invention:

- A. Species of combination of
fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
*and manifold comprises only two input ports
and one tube has an effective diameter of at least 10 um. (claims 1-8).*
- B. Species of combination of
fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
and at least the 1st 30% of the 1st tube is dedicated. (claims 9-13).
- C. Species of combination of
fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
and the output port has distinct 1st & 2nd openings in connection with the 1st and 2nd tubes. (claims 14-16).
- D. Species of **SUB COMBINATION ONLY** of
A MANIFOLD only , outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
And having 1st and 2nd syringes having lost volume fractions no more than 35%. (17-20).
- E. Species of combination of
fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
and having at least one port which is visually distinctive from the remaining ports). (claims 21-25).

Art Unit: 1723

- F. Species of combination of
fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
each port has a configuration where the outlet portion is different configuration of the inlet port. (claims 26-30).
- G. Species of **SUB COMBINATION ONLY** of
A MANIFOLD only, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
and the 1st & 2nd inlet ports are different configuration from one another. (claims 31-35).
- H. Species of combination of
fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
each port opening has a center point and the inlet and outlet port center point define a triangle. (claims 36-40).
- I. Species of **SUB COMBINATION ONLY** of
A manifold only , outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
And a continuous base with a height less than 2 times the width of the base. (claims 41-45)
- J. Species of **SUB COMBINATION ONLY** of
A MANIFOLD only, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
And having a base and the outlet port extends from the base at an offset angle away from the inlet ports.(claims 46-50).
- K. Species of **SUB COMBINATION ONLY** of
A MANIFOLD only, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
And having a base and at least one port has an inner and outer annulus and the inner surface of the port is beneath the upper surface of the base. (claims 51-55).
- L. Species of **SUB COMBINATION ONLY** of
A MANIFOLD only, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,
And having a base and the upper surface is convex. (claim 56).
- M. Species of **SUB COMBINATION ONLY** of

Art Unit: 1723

A MANIFOLD only, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,

And having the effective diameters of the 1st & 2nd tube being different from one another. (claim 57).

(claims 58-61 are withdrawn to a different invention)

N. Species of combination of

A GRAFT DELIVERY CHAMBER, a tube and funnel,

And the tube is attached at the lower end of the funnel and the funnel has an upper diameter larger than the lower end of the funnel which is attaché to the tube (claims 62-66).

O. Species of combination of

A GRAFT DELIVERY CHAMBER, a tube and plunger,

And the plunger rod tip has a radial transverse groove to from a transverse port with the inner wall of the tube. (claims 67-70).

P. Species of **SUB COMBINATION ONLY** of

**A FLUID RETENTION CHAMBER only,
A tube and end cap on at least one end of the tube.
(claim 71-73).**

Q. Species of **SUB COMBINATION ONLY** of

A MANIFOLD only, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,

And having a base and the outlet portion is on the upper surface of the base and having a graft stand on the upper surface. (claim 74).

(claims 75-84 are withdrawn to a different invention)

R. Species of combination of

fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes,

and the output port of the manifold has a male luer fitting and the fluid retention chamber has a female luer fitting. (claim 85)

S. Species of combination of

Art Unit: 1723

THE METHOD OF USE OF a fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes, and delivery syringes are used to flow fluid through the device. (claim 85-87)

T. Species of combination of

THE METHOD OF USE OF a fluid retention chamber & manifold, outlet port, 1st & 2nd inlet ports, 1st & 2nd tubes, and delivery syringes are used to flow fluid through the device and to inject into a treatment site. (claim 88)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species (of the species A through T) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, **no claim is generic.**

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

Art Unit: 1723

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. A telephone call was made to Thomas DiMauro on 1-5-2006, but did not result in an election being made and a written requirement was discussed.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tony G Soohoo
Primary Examiner
Art Unit 1723
